

Date of Decision: 22-12-95

Special Civil Application No.4459 of 1988

For Approval and Signature:

corrected

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.R.D.Raval,learned counsel for the petitioner.

Ms.P.J.Dawawala,learned counsel, for Mr.K.N.Raval,learned counsel for the respondent-Priyalakshmi Mills, Vadodara (a Unit of Gujarat State Textile Corporation).

Coram: (M.R. Calla, J.)

Dt: 22-12-95

ORAL JUDGMENT:

1. The petitioner was working as a Piler-permanent operative with the respondent-Mill and he was discharging his duties in the night shift as helper. On 17-8-84 while discharging the duties, the petitioner sustained electric shock and as a result thereof he sustained injury in both the eyes. He was examined by the Medical Board which assessed his disability as 0%. Against this decision of the Medical Board assessing his disability at

0%, the petitioner preferred an Appeal Under S.54A of the Employees' State Insurance Act, 1948. The Medical Appeal Tribunal at Ahmedabad in Appeal (MAT) No.366 of 1986 set aside the finding of the Medical Board and while allowing the petitioner's Appeal, recommended disability to the extent of 50% vide its order dated 1-1-87 as has been given out by the learned counsel for the petitioner. It is further submitted on behalf of the petitioner that against this order passed by the Medical Appeal Tribunal, the Employees' State Insurance Corporation preferred a Second Appeal before the E.S.I. Court at Ahmedabad and this Second Appeal (ESI) No.15 of 1987 was rejected by the E.S.I. Court vide its order dated 8-9-89. As a result of the disability of the petitioner assessed to the extent of 50%, the petitioner is being paid a sum of Rs.480/- P.M. by the E.S.I. Corporation since 28-12-84 as has been given out by the learned counsel for the petitioner.

2. It is the case of the petitioner that on 23-11-84 the Civil Surgeon of Jamnabai Hospital, Baroda issued a Certificate, which has been annexed with the Special Civil Application as Annexure 'A', certifying that the petitioner had impaired his night vision and he should avoid night duty and should be given light duty. The petitioner's case is that he requested the respondent-Mill to give him light duty during day hours because he had incapacitated himself to discharge the duties in the night shift on account of the impaired night vision while discharging the duties with the respondent-Mill. However, the Mill refused to give work to the petitioner during day hours and, therefore, the petitioner gave an approach letter dated 28-2-85 to the respondent-Mill and, thereafter, preferred a Termination Application, which is for short known as 'T Application' as contemplated by S.78 read with S.79 of the Bombay Industrial Relations Act, 1946 (herein-after referred to as 'the Act'). This Application was registered by the Labour Court, Vadodara as T. Application No.24 of 1985 and the same was decided by the Labour Court, Vadodara on 18-12-87 in favour of the petitioner directing the respondent-Mill to assign the duties to the petitioner during day shift in accordance with the Doctor's Certificate and give him the light work i.e. reinstatement with all consequential benefits. It was also directed that no action shall be taken against the petitioner for the alleged absence and he will be treated to be in regular employment and a cost of Rs.100/- was also awarded. The Labour Court while passing this order dated 18-12-87 decided the matter on the premises that the refusal to assign the work during day shift to the

petitioner, despite his disability to work in the night shift and the insistence of the respondent-Mill that the petitioner should work in the night shift only, had the effect of his unlawful oral termination. The Labour Court held that it was undisputed that the petitioner was working in the respondent-Mill on regular basis for a period of 16 years and had met with the accident while discharging the duties resulting in the impairment of his vision. It has been recorded by the Labour Court that Bhogilal Shanabhai Patel, who had been examined by the respondent-Mill, had admitted that the petitioner was working as Kireman Helper on regular basis and had met with the accident and sustained the shock while putting off the electric motor. On the basis of the Certificate given by the Civil Surgeon, the Labour Court found that according to the expert medical opinion, the petitioner could not have worked in the night shift and he could only work in the day shift with light duties. The Labour Court also considered the allegation of the petitioner that one Keshavbhai, who was working in day shift, had retired and, therefore, the petitioner could be accommodated against the vacancy which had become available on account of the retirement of Keshavbhai. The Labour Court also considered that Bhogilal Shanabhai Patel had admitted in the cross-examination that Keshavbhai had met with an accident during the discharge of his duties and on the basis of the Medical Certificate he has been assigned light duties as a Watchman and he retired and, therefore, the petitioner could be accommodated against the vacancy which had become available on account of the retirement of Keshavbhai. According to Labour Court, it was a state of helplessness for the petitioner that he could not discharge the duties in the night shift on account of impairment of his night vision suffered because of the accident, as aforesaid. Against this order dated 18-12-87 passed by the Labour Court, Vadodara, the respondent-Mill preferred an Appeal under S.84 of the Act before the Industrial Court. The order of the Labour Court was challenged by the respondent-Mill before the Industrial Court in Appeal on the ground that the respondent-Mill was prepared to keep the petitioner in the employment as helper during the night shift only because the duties, which he was discharging as helper, were already light duties, and, therefore, the case of the petitioner that he could be given light duties against the post, which had become available on account of retirement of Keshavbbai was irrelevant. Much stress was laid that the duties of helper by itself were light duties. The respondent-Mill also took the stand that the petitioner had no enforceable right to claim to discharge the duties during

day shift only and he ought to have joined the night shift and discharged the light duties as a helper in the night shift. It was also contended that the Labour Court had committed an error of law in passing the order in favour of the petitioner because the Labour Court had no powers to enforce any new contract of service between the parties so as to direct the respondent-Mill that the petitioner must be given duties during the day shift. It was also contended before the Industrial Court by the respondent-Mill that the petitioner had become incapable of working and, therefore, there is no question of giving any work to him.

3. The Industrial Court after considering the cases of both the sides came to the conclusion that the petitioner had no right to claim light duties in accordance with law and the findings of the Labour Court could not be sustained in the eye of law. According to the Industrial Court, the Labour Court has been created under law and it has to discharge the functions in accordance with law. While dealing with the T Applications it cannot create new rights and duties and the Labour Court has not been entrusted with any such power or function and that the Labour Court had taken the view in favour of the petitioner just out of sympathy. It is the finding of the Industrial Court itself that according to the humane approach, if the workman had met an accident while discharging the duties, it was the moral duty of the employer to give him a light work, but such a situation could not be enforced against the respondent-Mill. If the respondent-Mill does not allow the petitioner to discharge the duties, which he was discharging earlier or if he had been removed from the services, the Labour Court could consider the matter, but he could not claim the light duties and could not say that he may be given duties during day shift in place of Keshavbhai. The Industrial Court, therefore, found that the order of the Labour Court could not be sustained and accordingly the order passed by the Labour Court was set aside by the Industrial Court vide its order dated 18-7-88.

4. The petitioner has preferred this Special Civil Application on 8-8-88. Rule was issued on 21-8-89 by this Court and on behalf of the respondent No.1 i.e. Priyalakshmi Mills, which had been taken over by the Gujarat State Textile Corporation and was working as a Unit of Gujarat State Textile Corporation, an affidavit-in-reply dated 23-8-89 was filed seeking to traverse the petitioner's claim. The respondent has taken the stand in the reply that there was no vested

right in favour of the petitioner under the Act or any other law to file and maintain the petition of this nature. The fact that the petitioner met with an accident while in employment has been admitted, but it is stated that this incident had impaired the petitioner's vision only temporarily to certain extent and, therefore, he was being paid temporary disability benefit. According to the respondent it was not a case of permanent disability and the petitioner was asked to rejoin the respondent-Mill at his original place as a helper in the bleaching department where he was working earlier, but the petitioner refused to do so and insisted for light duties during day hours. It has been stated in para 4 that the Certificate issued by Jamnabai Hospital, Vadodara on 23-11-84 had been produced but the request of the petitioner was unjustified and not capable of being accepted. It is stated that the job of helper is actually of a light nature. It is also stated in the reply that assuming without admitting that Certificate issued by the Civil Surgeon was genuine, it had no binding or obligatory effect on the respondent-Mill, more so when the work of the petitioner was already of a light nature. With regard to the petitioner's case of the vacancy being available on account of Keshavbhai's retirement, it has been stated that the post kept occupied by Keshavbhai was of a temporary nature, Keshavbhai had retired in April, 1984 and that the post held by Keshavbhai being of a temporary nature is no longer there today and the respondent-Mill is not supposed to necessarily give work as per the alleged advice of the Civil Surgeon irrespective of the vacant post as alleged or otherwise. It has also been stated that the respondent-Company is a sick company and even otherwise the Textile Industry is in bad shape. In the reply, the respondent has contested the case of permanent disability. Notwithstanding the fact that the petitioner had served for a period of 16 years before the date he had met the accident, the respondent-Mill has stated that it was prepared to take back the petitioner as a Badli worker in the first or second shift. As there were no permanent jobs vacant in the first and second shift, it was not possible for the respondent-Mill to appoint the petitioner on any permanent post in the first or second shift. It has been further stated that there is always a waiting list of the persons, who wish to be appointed on permanent post and further that if the petitioner can get some other work from first or second shift to mutually change the place, the respondent has no objection. However, during the course of the arguments it was frankly stated by Ms. Dawawala appearing on behalf of the Gujarat State Textile Corporation that the respondent-Mill had been

taken over by the Gujarat State Textile Corporation and the respondednt-Mill is now functioning as a Unit of Gujarat State Textile Corporation, that now there was no night shift and only two shifts. It was also stated by her that had the petitioner rejoined to work in the night shift, by this time he would have been in the day shift even according to his original seniority. Ms. Dawawala has contended that the question of the impairment of the night vision was disclosed by the petitioner for the first time before the Labour Court and that only a xerox copy of the Civil Surgeon's Certificate was filed before the Labour Court and the original thereof had not been filed, the Doctor, who had issued the Certificate, had not been examined before the Labour Court and it was submitted that in accordance with the scope of S.78 of the Act, the Labour Court could not have granted the relief to the petitioner by creating new contract.

5. It was submitted by Mr.Raval appearing for the petitioner that the petitioner had throughout claimed the duties in the day shift on the basis of the impairment of the night vision and so far as the production of the xerox copy of the Civil Surgeon's Certificate before the Labour Court is concerned, he submits that the original was got perused by the presiding officer of the Labour Court. It is also contended by Mr. Raval for the petitioner that so far as the case of permanent disability is concerned, there is ample evidence on record to show that the petitioner had impaired his night vision and the argument that the duties of the helper were by itself light duties is of no avail because even if they are light duties, the petitioner had been rendered incapable of discharging light duties in the night shift on account of the impairment of the night vision and, therefore, he rightly claims to discharge the duties in the day shift on account of his disability and the petitioner's case was comparable only with the disabled workmen, if any, and not with the employees in general. Mr. Raval placed reliance on Rohtas Industrties Ltd. v. Brijnandan Pandey and others, reported in 1956(2) LLJ 444 and New Maneckchowk Spg. and Wvg.Co. v. Textile Labour Assocn.,reported in 1961(1) L.L.J. 521 and it has been submitted that the Labour Court in an appropriate case could certainly create new rights and obligations and may modify the contract and impose new terms of contract and that there is nothing in S.78 of the Act on the basis of which it can be contended that the Labour Court could not create new rights and obligations and could not modify the contract. According to Mr.Raval for the petitioner the view taken by the Industrial Court was contrary to the law laid down by the

Supreme Court and the order passed by the Labour Court deserves to be restored.

6. I have heard learned counsel for both the sides.

Looking to the material, which is available on record, it can be safely held that the petitioner had sustained the disablement entailing impairment of night vision and, therefore, it was not possible for the petitioner to discharge the duties even of light nature in the night shift. In normal course, the respondent-Mill should have, therefore, accommodated the petitioner in the day shift working. However, I find that instead of taking a pragmatic and humane approach, the respondent-Mill has taken a stubborn attitude and has approached the humane problem with an absolutely technical approach. It is unbelievable that a Mill, in which three shifts were running, could not accommodate a person from night shift to day shift on account of disablement, more particularly when the factum of the retirement of one Keshavbbai in August, 1984 was admitted. It was also admitted by the witness examined on behalf of the respondent-Mill, namely, Bhogilal, that Keshavbhai had also met with an accident while discharging duties and he was working as a watchman and on his retirement the petitioner could be given the same duties in the day shift. It is only a poor strategy to say that the post held by Keshavbhai was a temporary post and, therefore, after his retirement it was not available. It has not been pleaded that the post had been abolished and yet a bald statement is made in the reply that the post being temporary, it was not available after his retirement as if the duties of this post was coterminous with the period of the service of Keshavbhai. Such a stand may be open to be taken, but does not appear to be reasonable and it appears that a humane problem is being answered by taking it as a legal battle. It was unfortunate that the petitioner met with such an accident during the course of employment while discharging the duties and, therefore, the respondent-Mill should have been rather sympathetic towards the petitioner's plight instead of forcing him to the litigation, which could be avoided at that time itself by making slight adjustment, which was permissible as well as possible. Here is a case in which the matter was taken by way of Appeal against the order of the Labour Court before the Industrial Court and now it is sought to support the decision of the Industrial Court on the basis that the Labour Court can not create new rights and obligations. First of all I am of the opinion that there is no question of creating new rights and obligations or enforcement of any new contract or modification of the contract. The only question was as

to whether the services of the petitioner should be utilized in the day shift or night shift and, therefore, on account of a subsequent unfortunate event of an electric shock accident during the course of the employment, if a disabled person is given a job in the day instead of night, it can not be said to be creating a cause of new right and obligation. It is only a case of making adjustment with regard to the period and time with reference to the shift in the matter of discharging duties and how it can be branded as a case of creating new rights and obligations. Neither the petitioner was claiming any additional remuneration nor the shift of the petitioner in the day shift could entail any financial burden on the respondent-Mill. So far as the question of the light and hard duties are concerned, it is the case of the respondent-Mill itself that while working in the night shift as helper the petitioner was discharging light duties. Thus, there exists no dispute with regard to the light duties and the dispute was only as to whether he should work in the night shift or day shift. It is a dismal fact that petitioner's disablement was made a subject of dispute only with reference to the question of shift and in case the respondent-Mill would have allowed the petitioner to work in the day shift on account of disability, naturally any other disabled person in the night shift could make a grievance and none else and it is not the case of the respondent-Mill that there was any other disabled person in the night shift, who had claimed preference or could claim preference over the petitioner in the matter of the change of the shift.

7. Besides this, so far as the position of law is concerned in Rothas Industries Ltd.'s case (Supra) it was held by the Supreme Court that the Courts reach their limit of power when they enforce the contracts which the parties have made. But an Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimization. However, it was a case under the Industrial Disputes Act and if one extends these principles to any proceedings under the Bombay Industrial Relations Act, no exception can be taken thereof because the considerations in such matters remain the same, whether the proceedings are under Industrial Disputes Act or under Bombay Industrial Relations Act. Ultimate object is to maintain or restore the industrial peace to avoid victimization of the employees and to protect the rights of the workmen. Moreover in New Maneckchowk Spg. and Wvg. Co.'s case (Supra) the same principles have been considered with reference to the



Industrial Court and I find that here also the matter was considered in Appeal by the Industrial Court and, therefore, if the principles, which have been laid down in Rohtas Industries Ltd.'s case (Supra) can be possibly extended to the proceedings under the Bombay Industrial Relations Act, no exception can be taken thereto and in any case, it was not at all a case in which the Industrial Court should have reversed the order passed by the Labour Court on any of the grounds.

8. The upshot of the discussion, as aforesaid, is that this Special Civil Application succeeds and the impugned order passed by the Industrial Court on 18-7-88 is hereby quashed and set aside and the Award passed by the Labour Court on 18-12-87 is hereby restored. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

Whereas the petitioner has been suffering the agony of this litigation since long for a period over one decade, I deem it appropriate to direct the respondent-Mill to implement the Award dated 18-12-87 passed by the Labour Court, Vadodara in T. Application No. 24 of 1985 as expeditiously as possible, but in no case later than 31-1-1996.